

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers
Community Choices Waiver (LAC 50:XXI.8105, Chapter
83, 8501, 8701, 8901-8903, 9301, and Chapter 95)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXI.8105, Chapter 83, §8501, §8701, §§8901-8903, §9301, and Chapter 95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services adopted provisions which established the community choices waiver Program to replace the Elderly and Disabled Adults (EDA) Waiver (*Louisiana Register*, Volume 37, Number 12). The department promulgated an Emergency Rule that amended the December 20, 2011 Rule to clarify provisions governing the delivery of services, to remove the wage pass-through language that was erroneously included in the Rule, and to comply with a court-mandated standard for use in the determination of expedited community choices waiver slots and addition of waiver opportunities (*Louisiana Register*, Volume 38, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 20, 2012 Emergency Rule. This action is being taken to promote the health and welfare of waiver participants and to ensure that these services are rendered in a more cost-effective manner.

Effective February 17, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the Community Choices Waiver Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 7. Community Choices Waiver

Chapter 81. General Provisions

§8105. Programmatic Allocation of Waiver Opportunities

A. - D. ...

E. Notwithstanding the priority group provisions, up to 300 community choices waiver opportunities may be granted to qualified individuals who require expedited waiver services. These individuals shall be offered an opportunity on a first-come, first-serve basis.

1. To be considered for an expedited waiver opportunity, the individual must, at the time of the request for the expedited opportunity, be approved for the maximum amount of services allowable under the Long Term Personal Care Services Program and require institutional placement, unless offered an expedited waiver opportunity.

2. The following criteria shall be considered in determining whether or not to grant an expedited waiver opportunity:

a. - b. ...

c. the support from an informal caregiver is not available due to a family crisis;

d. the person lives alone and has no access to informal support; or

e. for other reasons, the person lacks access to adequate informal support to prevent nursing facility placement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3517 (December 2011), amended LR 39:

Chapter 83. Covered Services

§8301. Support Coordination

A. Support coordination is services that will assist participants in gaining access to needed waiver and other State Plan services, as well as needed medical, social, educational, housing and other services, regardless of the funding source for these services. Support coordination agencies shall be required to perform the following core elements of support coordination services:

1. intake;
2. assessment;
3. plan of care development and revision;
4. linkage to direct services and other resources;
5. coordination of multiple services among multiple providers;
6. monitoring and follow-up;
7. reassessment;
8. evaluation and re-evaluation of level of care and need for waiver services;
9. ongoing assessment and mitigation of health, behavioral and personal safety risk;
10. responding to participant crisis;
11. critical incident management; and
12. transition/discharge and closure.

B. Support coordinators shall provide information and assistance to waiver participants in directing and managing their services.

1. When participants choose to self-direct their waiver services, the support coordinators are responsible for informing participants about:

- a. their responsibilities as an employer;
- b. how their activities as an employer are coordinated with the fiscal agent and support coordinator; and

c. their responsibility to comply with all applicable state and federal laws, Rules, policies, and procedures.

2. Support coordinators shall be available to participants for on-going support and assistance in these decision-making areas and with employer responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011), amended LR 39:

§8305. Environmental Accessibility Adaptations

A. - A.1. ...

a. Once identified by MDS-HC, a credentialed assessor must verify the need for, and draft specifications for, the environmental accessibility adaptation(s).

b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011), amended LR 39:

§8307. Personal Assistance Services

A. - A.3. ...

4. supervision or assistance with health related tasks (any health related procedures governed under the Nurse Practice Act) in accordance with applicable laws governing the delegation of medical tasks/medication administration;

5. supervision or assistance while escorting/accompanying the participant outside of the home to perform tasks, including instrumental activities of daily living, health maintenance or other needs as identified in the POC and to provide the same supervision or assistance as would be rendered in the home; and

A.6. - C. ...

D. Community choices waiver participants cannot receive long-term personal care services.

E. - E.4. ...

5. "A.m. and p.m." PAS cannot be "shared" and may not be provided on the same calendar day as other PAS delivery methods.

6. It is permissible to receive only the "a.m." or "p.m." portion of PAS within a calendar day. However, "a.m." or "p.m." PAS may not be provided on the same calendar day as other PAS delivery methods.

7. PAS providers must be able to provide both regular and "a.m." and "p.m." PAS and cannot refuse to accept a community choices waiver participant solely due to the type of PAS delivery method that is listed on the POC.

F. ...

G. A home health agency direct service worker who renders PAS must be a qualified home health aide as specified in Louisiana's Minimum Licensing Standards for Home Health Agencies.

H. - I. ...

J. The following individuals are prohibited from being reimbursed for providing PAS services to a participant:

J.1. - K. ...

L. It is permissible for the PAS allotment to be used flexibly in accordance with the participant's preferences and personal schedule and OAAS' documentation requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011), amended LR 39:

§8311. Adult Day Health Care Services

A. - B. ...

1. meals, which shall not constitute a "full nutritional regimen" (three meals per day) but shall include a minimum of two snacks and a hot nutritious lunch;

2. transportation between the participant's place of residence and the ADHC in accordance with licensing standards;

B.3. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3521 (December 2011), amended LR 39:

§8313. Caregiver Temporary Support Services

A. ...

B. Federal financial participation is not claimed for the cost of room and board except when provided as part of caregiver temporary support services furnished in a facility approved by the state that is not a private residence.

C. - E. ...

F. When Caregiver temporary support is provided by an ADHC center, services may be provided no more than 10 hours per day.

G. Caregiver temporary support services may be utilized no more than 30 calendar days or 29 overnight stays per plan of care year for no more than 14 consecutive calendar days or 13 consecutive overnight stays. The service limit may be increased based on documented need and prior approval by OAAS.

H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3521 (December 2011), amended LR 39:

§8315. Assistive Devices and Medical Supplies

A. Assistive devices and medical supplies are specialized medical equipment and supplies which include devices, controls, appliances, or nutritional supplements specified in the POC that enable participants to:

A.1. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3521 (December 2011), amended LR 39:

§8321. Nursing Services

A. Nursing services are services that are medically necessary and may only be provided efficiently and effectively by a nurse practitioner, registered nurse, or a licensed practical nurse working under the supervision of a registered nurse. These nursing services must be provided within the scope of the Louisiana statutes governing the practice of nursing.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3522 (December 2011), amended LR 38:3522 (December 2011), amended LR 39:

§8323. Skilled Maintenance Therapy

A. - F.3.i. ...

4. Respiratory therapy services which provide preventative and maintenance of airway-related techniques and procedures including:

F.4.a. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the

Office of Aging and Adult Services, LR 37:3522 (December 2011), amended LR 39:

Chapter 85. Self-Direction Initiative

§8501. Self-Direction Service Option

A. The self-direction initiative is a voluntary, self-determination option which allows the participant to coordinate the delivery of personal assistance services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the participant utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. - C.2.d.ii. ...

iii. fails to provide required documentation of expenditures and related items;

iv. fails to cooperate with the fiscal agent or support coordinator in preparing any additional documentation of expenditures and related items; or

v. violates Medicaid Program rules or guidelines of the self-direction option.

D. Employee Qualifications. All employers under the self-direction option must:

1. be at least 18 years of age on the date of hire; and
2. complete all training mandated by OAAS within the specified timelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3523 (December 2011), amended LR 39:

Chapter 87. Plan of Care

§8701. Plan of Care

A. The applicant and support coordinator have the flexibility to construct a plan of care that serves the participant's health and welfare needs. The service package provided under the POC shall include services covered under the community choices waiver in addition to services covered under the Medicaid State Plan (not to exceed the established service limits for either waiver or state plan services) as well as other services, regardless of the funding source for these services. All services approved pursuant to the POC shall be medically necessary and provided in a cost-effective manner. The POC shall be developed using a person-centered process coordinated by the support coordinator.

B. - C.1. ...

2. individual cost of each waiver service; and

3. the total cost of waiver services covered by the POC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3524 (December 2011), amended LR 39:

Chapter 89. Admission and Discharge Criteria

§8901. Admission Criteria

A. - A.5. ...

B. Failure of the individual to cooperate in the eligibility determination or plan of care development processes or to meet any of the criteria above shall result in denial of admission to the community choices waiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3524 (December 2011), amended LR 39:

§8903. Admission Denial or Discharge Criteria

A. - A.6. ...

7. The individual fails to cooperate in the eligibility determination or plan of care development processes or in the performance of the POC.

8. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3524 (December 2011), amended LR 39:

Chapter 93. Provider Responsibilities

§9301. General Provisions

A. ...

B. The provider agrees to not request payment unless the participant for whom payment is requested is receiving services in accordance with the Community Choices Waiver Program provisions and the services have been prior authorized and actually provided.

C. Any provider of services under the community choices waiver shall not refuse to serve any individual who chooses their agency unless there is documentation to support an inability to meet the individual's health, safety and welfare needs, or all previous efforts to provide services and supports have failed and there is no option but to refuse services.

C.1. - D. ...

E. Any provider of services under the community choices waiver shall not interfere with the eligibility, assessment, care plan development, or care plan monitoring processes including, but not limited to:

1. harassment;

2. intimidation; or

3. threats against program participants or members of their informal support network, of DHH, or support coordination staff.

F. Any provider of services under the community choices waiver shall have the capacity and resources to provide all aspects of any service they are enrolled to provide in the specified service area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3524 (December 2011), amended LR 39:

Chapter 95. Reimbursement

§9501. Reimbursement Methodology

A. - A.1.c. ...

2. in-home caregiver temporary support service when provided by a personal care services or home health agency;

3. caregiver temporary support services when provided by an adult day health care center; and

4. adult day health care services.

B. - G. ...

H. Reimbursement shall not be made for community choices waiver services provided prior to the department's approval of the POC.

I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011), amended LR 39:

§9503. Direct Support Professionals Minimum Wage

A. The minimum hourly rate paid to direct support professionals shall be at least the current federal minimum wage.

A.1. - B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011), amended LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary